

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

 Amendment of the Commission's Rules
 With Regard to the 3650-3700 MHz
 Government Transfer Band)

 ET Docket No. 98-237
 RM-9411

 The 4.9 GHz Band Transferred from
 Federal Government Use)

WT Docket No. 00-32

To: The Commission

REPLY COMMENTS OF
BLOOSTON, MORDKOFKY, DICKENS, DUFFY AND PRENDERGAST

The law firm of Blooston, Mordkofsky, Dickens, Duffy and Prendergast, Washington, D.C., submits these reply comments in response to the Second Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 00-363, released October 24, 2000) on behalf of the following rural telecommunications carriers: Hickory Tech Corporation, Mankato, MN ("Hickory Tech"); Kerrville Telephone Company, Kerrville, Texas ("KTC"); Lincoln County Telephone System, Inc., Pioche, NV ("Lincoln County"); Peñasco Valley Telephone Cooperative, Artesia, NM ("PVT"); Souris River Telecommunications Cooperative, Inc. ("SRT"); Sully Buttes Telephone Cooperative, Highmore, SD ("Sully Buttes"); 3 Rivers Telephone Cooperative, Inc., Fairfield, MT ("3 Rivers"); and Townes Telecommunications, Inc., Lewisville, AR ("Townes") (hereinafter, the "Rural Carriers").

As discussed below, it is *most important* that the licensing rules for the 3650-3700 MHz and 4.9 GHz bands facilitate participation by telecommunications carriers with a demonstrated history of serving rural areas. For this reason, the Rural Carriers agree with a significant number

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of commentors and strongly support the licensing of the 3650-3700 MHz and 4.9 GHz bands along the lines of MSAs and RSAs. The Rural Carriers believe that each license should encompass the full 50 MHz of spectrum to provide sufficient capacity for advanced broadband services, and to maximize network design flexibility.

I. STATEMENT OF INTEREST AND OVERVIEW.

The Rural Carriers provide local exchange telephone and advanced telecommunications services via wireline and/or wireless facilities in rural communities throughout the United States. They include cellular and broadband Personal Communications Services (“PCS”) carriers as well as companies that are in the process of designing and building Local Multipoint Distribution Service (“LMDS”) and 39 GHz fixed wireless networks. Each has a significant interest in the development of wireless local loop (“WLL”) and wireless Internet access technologies. Moreover, several provide service in or near Indian reservations. Because of their high bandwidth and short propagation, LMDS and 39 GHz systems are particularly well suited for providing “last mile” service to office parks and small communities. On the other hand, the more favorable propagation characteristics of the 3650-3700 MHz and 4.9 GHz bands will allow rural carriers to serve widely scattered customers in more remote areas, and to link their LMDS and 39 GHz hubs.

The Rural Carriers applaud the Commission for allocating 50 megahertz of spectrum in the 3650-3700 MHz band to the fixed and mobile terrestrial services because spectrum in this frequency range appears to be ideally suited for the provision of advanced telecommunications services in rural areas. The Rural Carriers also support the Commission’s effort to augment to original proposal of 50 MHz by adding spectrum from the 4.9 GHz band. While the record reflects certain objections to this band, the concept of increasing the proposed fixed wireless

allocation to 100 MHz is in the public interest. However, to facilitate the development of the service in less populated areas, and to ensure that this band becomes an effective tool for rural service providers, the Rural Carriers believe the Commission should license the band on the basis of the 728 Rural Service Areas and Metropolitan Statistical Areas (“RSAs/MSAs”). This will have the added benefit of providing opportunities for small businesses and other entrepreneurs that are experienced in the provision of rural service. The Commission can further meet its Section 309(j) obligation to facilitate the provision of advanced telecommunications services to all Americans if it adopts flexible spectrum use policies for the 3650-3700 MHz band. These and other recommendations are discussed below.

II. REPLY COMMENTS OF THE RURAL CARRIERS

Geographic Areas and Spectrum Blocks

The Rural Carriers agree with a significant number of commentors in the captioned proceedings who have urged the Commission to adopt RSAs/ MSAs as the geographic licensing areas for the 3650-3700 MHz and 4.9 GHz bands.¹ In particular, the SBA correctly points out that smaller geographic areas such as these would both “encourage small business participation in the spectrum auction and would speed service to rural areas.”² The Commission itself has indicated that this allocation will help foster the introduction of advanced services to rural areas of the United States, thus promoting the objectives of Section 706 of the Telecommunications Act of 1996 to facilitate the rapid deployment of advanced telecommunications services and

¹ See Comments of United States Small Business Association (“SBA Comments”); Comments of Advanced TelCom Group (“Advanced Comments”) at pps. 2-4 (“the use of larger geographic areas ... will not ensure that services are provided to less densely populated areas”); Comments of Global Frontiers, Inc. (“Global Comments”) at p. 5 (license areas should be smaller than EAs, such as MSAs and RSAs); Comments of Transcomm, Inc. (“Transcomm Comments”) at pages 6-7. The Rural Carriers (or their affiliates) participated in the filing of comments and reply comments to the initial NPRM in ET Docket No. 98-237, advocating the adoption of smaller license areas for the 3650-3700 MHz band. See Comments of Blooston, Mordkofsky, Jackson & Dickens (*filed* Feb. 16, 1999) and Reply Comments of Blooston, Mordkofsky, Jackson & Dickens (*filed* March 1, 1999).

² SBA Comments at 1.

technologies to all Americans.³ However, these objectives will go unmet if the Commission promotes license areas that are significantly larger. The Commission cannot rely upon the possibility of geographic partitioning and/or spectrum disaggregation transactions to meet its statutory obligation in this regard. The Rural Carriers have observed that partitioning and disaggregating spectrum rights in broadband PCS and LMDS have failed to put spectrum into the hands of rural carriers. Larger licensees are simply too preoccupied with their metropolitan buildout, and perceive insufficient incentive, to take the time to negotiate with rural service providers. Also, licensees appear to perceive a benefit to keeping their market area licenses intact, for purposes of later sale.

The Rural Carriers continue to believe that licenses in each of the 3650-3700 MHz and 4.9 GHz bands should encompass the full 50 MHz of spectrum, to provide enough spectrum for advanced broadband services such as high speed data and internet access. Licensees should be able to aggregate the 50 MHz blocks, if desired, but there appears to be a consensus among the commentors that the Commission should not license the 50 megahertz of spectrum in the 3650-3700 MHz band with the 50 megahertz of spectrum in the 4.9 GHz band as paired channels.⁴

Regulatory Status; Flexible Use

The Rural Carriers believe the Commission should permit applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather

³ See In the Matter of Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, *First Report and Order and Second Notice of Proposed Rule Making*, ET Docket No. 98-237, FCC 00-363, (*rel.* October 24, 2000) ("*Second NPRM*") at paragraph 1.

⁴ See Comments of Adaptive Broadband Corp. ("*Adaptive Comments*") at 4-5; Comments of Airspan Communications Corporation ("*Airspan Comments*") at 1 (recommending the allocation of a pair of bands with a minimum of 100 MHz separation and a maximum of 400 MHz separation); Comments of Global Frontiers, Inc. ("*Global Comments*") at 3; Comments of Innwave ECI Wireless Systems, Ltd. ("*Innwave Comments*") at 1; Comments of Motorola, Inc. ("*Motorola Comments*") at 1, 6-9; Comments of National Academy of Sciences' Committee on Radio Frequencies ("*CORF Comments*") at 9; Transcomm Comments at 4 (FWA hardware design

than require the applicant to choose between common carrier and non-common services. It is unclear at this point what service or services licensees will find best suited to the fixed wireless spectrum in a given market. Allowing licensees to request a combined regulatory status provides them with the greatest flexibility to use the spectrum for applications that are best suited for the needs of their customers and their internal operations. It will also allow licensees to change their service offerings in response to market conditions and the emergence of new and improved technologies.

Eligibility; Spectrum Aggregation

In general, the Rural Carriers agree with the Commission's proposal that there be no additional restrictions on eligibility for a license in the 3650-3700 MHz band, consistent with the existing Part 27 rules. However, to ensure the development of rural service, the FCC should adopt special eligibility restrictions for rural licenses (which could be easily identified as RSAs if the Commission uses the license areas discussed above. One commentor, Transcomm, Inc., proposes that the Commission should restrict eligibility for RSA licenses to incumbent cellular, wireline, ISPs, rural or tribal enterprises, or utilities that can take advantage of their existing infrastructure and more rapidly deploy FWA solutions in rural and tribal areas.⁵ The Rural Carriers strongly support the goals of this proposal. Such a restriction might be implemented as a restriction on which entities may apply for an RSA license, or as a bidding credit for rural service providers. Such a bidding credit should be separate from any small business bidding credits offered, and separate from any tribal area service credit offered. Rural carriers that

and technical limitations suggest there is no merit in coupling the bands for FDD purposes, and might limit the flexibility for TDD operations within each of the two bands).

⁵ Transcomm Comments at 6-7.

qualify for more than one type of bidding credit in a given market should be able to add their bid credits to further reduce the cost of obtaining their license.

License Term; Renewal Expectancy

The Rural Carriers believe that a 10-year license term, combined with a renewal expectancy, will help to provide a stable regulatory environment that will be attractive to investors and thereby encourage development of this spectrum.

Partitioning and Disaggregation of Licenses; Band Managers

As mentioned previously, the Rural Carriers believe that licensees should be permitted to partition and/or disaggregate their licenses as they see fit. However, because the marketplace has not provided licensees with sufficient incentive to enter into partitioning and disaggregation arrangements with rural carriers, the Commission should offer additional incentives, such as “enhanced” buildout credits (*e.g.*, tripling the population that a licensee can deduct from its buildout requirement), to promote such transactions.

Another way the Commission can ensure that entrepreneurs and small businesses have access to spectrum is by adopting policies that encourage the development of spectrum lease and other secondary market arrangements in the 3650-3700 MHz band.

While such measures will help foster more transactions that the industry has seen in the past, the Rural Carriers believe that smaller license areas and rural eligibility restrictions / incentives will be necessary to make rural telephone company participation a realistic possibility.

Performance Requirements

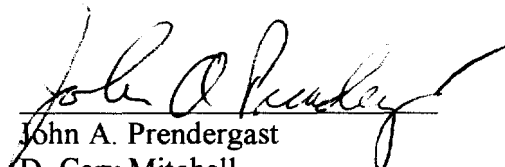
The Rural Carriers believe that system buildout and service obligations should be market driven. In rural markets, where low population density makes coverage benchmarks problematic, a “substantial service” option should be available. A showing that a substantial

service is being provided to the portion of the population where coverage is reasonable and cost-effective should satisfy the goals of the build-out requirement.

CONCLUSION

In sum, the Rural Carriers believe the Commission can go a long way toward meeting its Section 309(j) obligation of facilitating the provision of advanced telecommunications services to all Americans if it licenses the 3650-3700 MHz and the 4.9 GHz bands along smaller service areas. The record in this proceeding shows significant support for the licensing of these bands on the basis of RSAs/MSAs. The Commission should also preserve the entire 50 MHz allocated in each band for a single 50 MHz license rather than smaller blocks.

Respectfully Submitted,



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Dated: January 17, 2001

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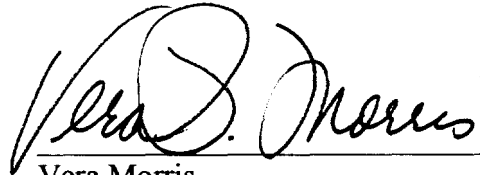
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